United States Department of Labor Employees' Compensation Appeals Board

A.C. Appellant)
A.C., Appellant)
and) Docket No. 11-2077) Issued: May 9, 2012
DEPARTMENT OF THE ARMY, WHITE SANDS MISSLE RANGE, NM, Employer) issued. Widy 9, 2012))
Appearances: Appellant, pro se Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:
RICHARD J. DASCHBACH, Chief Judge
ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge

On September 23, 2011 appellant filed a timely application for review of the Office of Workers' Compensation Programs' (OWCP) May 3, 2011 merit decision denying his claim for an increased schedule award for right lower extremity impairment. The Board docketed the appeal as No. 11-2077 in OWCP File No. xxxxxx663.

The Board has duly considered the matter and finds that this case is not in posture for a decision. Appellant's March 26, 2010 traumatic injury claim in the current record, OWCP File No. xxxxxx663, was accepted for right medial meniscal tear. OWCP denied appellant's claim for a schedule award by decision dated May 3, 2011 on the grounds that he had previously received schedule awards for 10 percent right lower extremity impairment in OWCP File No. xxxxxxx599 on August 10, 2001 and an additional 10 percent impairment of the right lower extremity on January 11, 2005 in OWCP File No. xxxxxxx586 for a total of 20 percent. OWCP found that appellant had no more than 20 percent impairment of his right lower extremity for which he had received schedule awards.

¹ Appellant was a 45-year-old firefighter (hazmat technician) at the time of the March 26, 2010 employment injury.

The Federal Employees' Compensation Act and its implementing regulations provide for the reduction of compensation for subsequent injury to the same scheduled member.² Benefits payable under 5 U.S.C. § 8107(c) shall be reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.³ The record in the instant case, however, does not contain any evidence relating to the development of the schedule awards in OWCP File Nos. xxxxxxx599 and xxxxxxx586. The Board is therefore unable to determine whether the schedule awards received for the right lower extremity impairment in these files is duplicative of that in the current file. The Board finds that the medical evidence contained in File Nos. xxxxxxx599 and xxxxxxx586 will necessarily bear directly on appellant's claim for compensation in File No. xxxxxxx663 and thus these files should be combined.⁴

Because it is essential for the Board to review the medical evidence contained in File Nos. xxxxxx599 and xxxxxx586 in order to render a full and fair adjudication of the present appeal, this case will be remanded for OWCP to consolidate case File Nos. xxxxxxx599 and xxxxxxx586 and File No. xxxxxxx663. Reconstruction and proper assemblage of the record will be followed by any necessary further development and a *de novo* decision on the merits of the claim, in order to protect appellant's appeal rights.

² 5 U.S.C. § 8108, 20 C.F.R. § 10.404 (c).

³ 20 C.F.R. § 10.404(c)(1), (2).

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, File Maintenance and Management, Chapter 2.400.8 (February 2000).

IT IS HEREBY ORDERED THAT the May 3, 2011 decision of the Office of Workers' Compensation Programs is set aside and the case remanded for further proceedings consistent with this order of the Board.

Issued: May 9, 2012 Washington, DC

> Richard J. Daschbach, Chief Judge Employees' Compensation Appeals Board

> Alec J. Koromilas, Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board